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מדינת ישראל
משרד החוץ

# Hamas-Israel Conflict 2023: Key Legal Aspects

*Updated to November 2, 2023*

*This paper provides an overview of key legal aspects of the hostilities triggered by the horrific attacks perpetrated against Israel on October 7, 2023, which were staggering in their brutality and their contempt for basic humanity. Israel is committed to bringing home the hostages held in Gaza and to defending its citizens and territory in a manner that is consistent with the rule of law, despite facing an enemy with the same disdain for law that it has for human life. The circumstances on the ground are dynamic, and there is widespread – and sometimes deliberate – misinformation about the law and the facts. Any serious legal analysis must be based on the legal rules applicable to the situation and on a trustworthy account of the facts to which those legal rules apply. This paper provides important factual and legal context for this purpose.*[*]

▪ **The applicable law.** The applicable legal framework governing the hostilities is the law of armed conflict (LOAC), also referred to as international humanitarian law (IHL), in particular its rules regulating the conduct of hostilities.

▪ **Hamas and Islamic Jihad continue to attack Israel, hold hostages, and are committing war crimes and crimes against humanity.** The savage attacks perpetrated by Palestinian terrorist groups on October 7 and since then unquestionably constitute serious violations of international law, often amounting to war crimes and crimes against humanity. They include the slaughter of over 1,400 Israelis and foreign citizens, the wounding of over 5,500, widespread acts of torture and maiming, burning alive, beheading, rape and sexual violence, mutilation of corpses, the abduction of at least 247 hostages (including infants, entire families, persons with disabilities, and Holocaust survivors), the indiscriminate firing of thousands of rockets, and the use of Palestinian civilians as human shields. Some of these crimes may also constitute genocide, as they are carried out with the "intent to destroy in whole or part, a national, ethnical, racial or religious group" in furtherance of Hamas's declared genocidal agenda. Israel continues to face indiscriminate firing of rockets from Gaza and repeated attempts to infiltrate Israel to murder more Israelis, while the hostages taken by Hamas remain without ICRC visits or communication with the outside world.

▪ **Israel's right and obligation to defend itself.** In relative terms, taking into account the size of Israel's population, the scope of the attack launched on October 7 is equivalent to the 9/11 attacks many multiple times over. Israel has the right, and indeed the obligation, to defend its citizens and territory by taking all legitimate measures to secure the release of the hostages and neutralize the threat it is facing. This threat is both grave and immediate: some Israeli communities lie meters away from the border, and hundreds of thousands of Israelis live within kilometers of Gaza. On October 7 Hamas and Islamic Jihad penetrated even further into Israeli territory, including into Sderot, which has a population of over 20,000; almost all of Israel remains within range of Hamas's rockets. In these circumstances, Israel is both entitled and compelled to act so as to deny Hamas and other terrorist groups in Gaza the capacity to continue attacking its citizens and territory.

[*] This paper was prepared during ongoing and dynamic hostilities and should not be considered as a comprehensive presentation of Israel's positions concerning the legal and factual situation.

Israel is simultaneously contending with ongoing attacks and threats emanating from other States and terrorist groups, including Iran and Iranian proxies such as Hezbollah. Hundreds of rockets, missiles and drones have been fired at Israel from Lebanon and Syria, in violation of general international law as well as of UN Security Council Resolution 1701 (2006) and the 1974 Israel-Syria Disengagement Agreement, respectively. Israel is responding to these attacks and has evacuated entire communities from northern Israel for their safety. Multiple ballistic missiles and armed drones have also been launched at Israel from Yemen. These continued attacks could at any moment lead to even wider hostilities.

▪ **Israel's commitment to international law.** Despite Hamas's unimaginable brutality and its disdain for human life – whether Israeli or Palestinian – and for the law, Israel is committed to conducting its military operations in accordance with international law, as Israel's senior political and military leadership has repeatedly affirmed. Israel has incorporated LOAC into all aspects of its military operations through legal training, operational procedures and plans, continuous operational legal advice, and robust and independent investigation mechanisms for addressing allegations of IDF misconduct. The Office of Israel's Attorney General provides ongoing international law advice to the Cabinet and the Government, and Israel's Supreme Court has jurisdiction to exercise judicial oversight, including during hostilities.

▪ **Suggesting a moral equivalence between Israel and terrorist organizations is repugnant.** Any sound analysis of Israeli operations cannot avoid the crucial context of the ongoing attacks, as well as the nature of the enemies, and the scope of the threat, that Israel faces on multiple fronts. It must reject any moral equivalence between those defending against terrorism and those perpetrating it; between a State whose commitment to law underpins its military operations and a terrorist group which openly defies the law; between the IDF, which seeks to minimize civilian harm, and the terrorist groups that deliberately target Israeli civilians while perversely viewing Palestinian civilians as expendable and using them as human shields.

▪ **The facts matter**. A sound legal assessment necessitates an accurate and reliable appreciation not just of the law, but also of the facts. Given the dynamic and complex reality of hostilities, and the deliberate attempts by Hamas and other actors to mispresent or fabricate the facts, it is critical to exercise caution and avoid rushing to judgment, as was unfortunately the case in connection with the *Al-Ahli* hospital incident. Statements by Hamas and other terrorist groups, including by the Hamas-run organs such as the "Ministry of Health", or by figures subject to Hamas control or intimidation, cannot in any event be used as a reference or reliable source.

▪ **Key principles governing Israeli military operations:**

**Distinction:** Israel is operating against Hamas and other terrorist groups in Gaza, not against the civilian population. It is directing its attacks only at military objectives, and is in no way engaging in "collective punishment". Consistent with LOAC, and especially given Hamas's unlawful strategy of systematically embedding its military activity and assets in populated areas (including residential and commercial buildings, places of worship and hospitals), many ostensibly civilian objects may become legitimate targets. LOAC further provides that Hamas militants who fail to distinguish themselves from the civilian population are legitimate targets, as are civilians taking direct part in hostilities. As a result, it cannot be concluded from the mere fact that seeming "civilians" or "civilian objects" have been targeted, that an attack was unlawful.

**Proportionality:** Under LOAC, an attack against a military target must accord with the rule of proportionality, according to which it is prohibited to carry out an attack when the expected incidental loss of civilian life, injury to civilians, or damage to civilian objects would be excessive in relation to the concrete and direct military advantage that is anticipated from the attack. The military advantages that the IDF is seeking include destroying enemy military assets, targeting militants, degrading and denying enemy ability to command and control operations, neutralizing underground tunnels and infrastructure used for military purposes, and denying positions (such as sniper, anti-tank and surveillance posts) which endanger IDF ground forces, all of which contribute to the overall objective of securing the release of the hostages and removing Hamas's capability to attack Israel and its citizens. LOAC provides that a proportionality assessment is based on the military commander's judgement at the time of the attack, not on hindsight: the test is conduct-oriented, not result-oriented. As a matter of law, civilian casualties or damage to civilian objects, while tragic, do not of themselves allow for a conclusion in regard to proportionality without an informed assessment of both the expected civilian harm and the military advantage anticipated at the time of the attack.

**Precautions and mitigating civilian harm:** Under LOAC, when conducting attacks, parties to a conflict must take precautions that are feasible under the operational circumstances to minimize civilian death or injury as well as damage to civilian objects. Accordingly, the IDF employs various precautionary measures where practically possible in the operational circumstances, including advance warnings and in choosing weapons and munitions. In attempting to mitigate civilian harm, the IDF has moreover repeatedly called on civilians to temporarily evacuate northern Gaza, where more intense hostilities are expected, to the south, where aid is also more available. Hamas has sought forcibly to prevent civilians from leaving areas of hostilities in order to unconscionably exploit civilian casualties and to hinder IDF operational activities.

**Humanitarian assistance:** Under LOAC, parties to an armed conflict are required to allow and facilitate access of consignments of supplies essential for the survival of the civilian population if the civilian population is not adequately provided with such supplies. This obligation is subject under LOAC to important conditions, including that there are no serious reasons for fearing that the consignments will be diverted from their civilian destination or otherwise provide a definite advantage to the enemy's military efforts.

Israel wishes no harm to civilians and is committed to addressing the humanitarian needs of those suffering as a result of Hamas's brutality and instigation of these hostilities. A designated Israeli unit (COGAT) is closely monitoring the humanitarian situation and the needs of the civilian population in Gaza, and is coordinating humanitarian activities with relevant international actors and agencies. Israel is facilitating the entrance of consignments and additional aid to Gaza from Egypt and is working to significantly increase such assistance. Israel is doing so even though Hamas possesses many essential supplies which it is deliberately withholding from its civilians, and that some of the consignments entering Gaza include supplies that are not currently lacking.

It is not possible to effectively respond to the humanitarian situation in Gaza without appreciating that the greatest humanitarian threat to Palestinians in Gaza is that they have lived for years under the control of a genocidal terrorist organization that has no regard for their well-being, and that has systematically stolen international aid, and smuggled arms within such aid,

so as to advance its own terrorist objectives. Massive stockpiles of fuel, medical, and other supplies, all designated for hospitals and general civilian use, have instead been hoarded by Hamas and are used to sustain its military operations and attacks on Israel (UNRWA has recently stated publicly that Hamas stole tens of thousands of liters of fuel from its warehouses). Genuine concern for the humanitarian situation must also include an unequivocal demand from Hamas to release the reserves it is denying the civilian population, and must ensure that effective mechanisms are in place so that humanitarian assistance reaches its intended civilian destination and is not sustaining the terrorists that are endangering both Israeli and Palestinian lives.

At all times, addressing the legal and practical challenges of humanitarian assistance in these exceptional circumstances requires accurate knowledge of the facts, including that Hamas fire has damaged 9 out of 10 electricity lines coming from Israel (which supply about 50% of the electricity in Gaza, the rest being produced locally); that on October 7 Hamas attacked and significantly damaged the main crossing for Palestinian civilians into Israel (through which almost 20,000 Gazan workers previously passed daily), killing and abducting Israeli personnel; that in recent years Israel has facilitated the installation of alternative energy sources (such as solar panels) for most essential services in Gaza; that 90% of Gaza's water does not ordinarily come from Israel; and that Israel still supplies water to Gaza (including by fixing pipes damaged by Hamas fire). Israel remains committed to ensuring and expanding the access of Palestinian civilians to humanitarian assistance, but international law does not require it to do so in a manner that enables that assistance to be diverted or exploited so as to sustain Hamas's capabilities to attack Israel and its citizens.

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**For more details, see attached:**

**ANNEX 1: The Attacks and Threats Against Israel – Additional Details**

**ANNEX 2: Legal Aspects of the Hamas-Israel Conflict 2023**

**ANNEX 3: Additional Resources on Facts and Law**

**ANNEX 1**

## THE ATTACKS AND THREATS AGAINST ISRAEL – ADDITIONAL DETAILS

*Updated to November 2, 2023*

In order to properly appreciate the context within which Israeli military operations are taking place, it is critical to understand the scope of the barbaric attacks against Israel and the ongoing threats that Israel is facing on multiple fronts.

The current hostilities were triggered on October 7, 2023 with the infiltration of at least 1,500 Hamas and Islamic Jihad militants into Israel, raiding twenty Israeli towns, Kibbutzim and cities, a music festival, border crossings, and military bases, and systematically committing widespread and grave violations of international law, war crimes and crimes against humanity of unimaginable brutality exceeding even that of groups such as ISIS, including –

- The **slaughter of over 1,400 infants, children, women, and men** (the overwhelming majority of them civilians), including Jews, Arabs and foreign nationals, pregnant women and their fetuses, the elderly, and persons with disabilities;

- The **wounding of over 5,500** individuals;

- **Torturing** and **maiming** (including of children in front of their parents, and of parents in front of their children), **executing** handcuffed persons, **burning alive**, **beheading** – including of babies, children and the elderly;

- **Rape** and other acts of **sexual violence**;

- **Mutilating** and **sexually abusing corpses**, and **booby-trapping corpses**;

- **Dressing as IDF soldiers and civilians** in order to conduct attacks;

- **Attacking ambulances** and **first responders**;

- **Killing animals**;

- Causing **widespread destruction of civilian property**, including by systematically **burning homes to the ground**; and

- **Looting** homes and communities.

**At least 247 Israeli and foreign nationals were taken as hostages into Gaza** (the overwhelming majority civilians, including entire families, infants, elderly, Holocaust survivors, the sick, and persons with disabilities). These hostages are being held **incommunicado** by various armed groups and are assessed to be **dispersed throughout Gaza**. Some of the hostages are in **urgent need of lifesaving medical care**. Hamas has publicly **threatened to execute** hostages. To date, four hostages have been released (some of whom have family members still being held) and one has been rescued.

**This was the largest massacre of Jews in a single day since the Holocaust**. Even now the number of fatalities has yet to be finalized, especially as recovery and identification efforts have been complicated as a result of people being burnt entirely to ashes (including whole families, making DNA identification particularly difficult), while other corpses were booby-trapped, and **over 40 Israelis are still unaccounted for**.

At the same time as the massacre inside Israel, **Hamas and other terrorist groups** in Gaza **fired indiscriminately thousands of rockets and mortars into Israeli cities**; launched **armed drones** to attack defensive infrastructure, military bases, people and ambulances; and conducted **incursions into Israel** from the sea. These attacks served both as a **diversion** for the raids across the border and as a method of **driving civilians into bomb shelters** so as to make easier the infiltration into their communities and homes and their slaughter.

**Attacks have continued incessantly since October 7**. Hamas continues to send squads from Gaza to target Israel via land and sea, and to deploy attack drones via the air, while **seeking to coordinate with other armed groups to attack Israel** from additional fronts. Hamas and other terrorist groups are also carrying out attacks in the West Bank. Rocket and mortar fire from Gaza has continued constantly: to date, **over 9,000 projectiles have been fired into Israel**. While Israel's aerial defenses (Iron Dome) have intercepted many of these, many others have hit residential areas, resulting in **death and injury**, and causing extensive damage to homes, hospitals, public buildings, and agriculture areas. **More than 700 Palestinian rockets have misfired**, causing death, injury, and devastation within Gaza itself.

These attacks constitute **grave violations of international law**, and often amount to **war crimes** and **crimes against humanity**. Some of these crimes may also constitute **genocide**, as they are carried out with "an intent to destroy in whole or in part, a national, ethnical, racial or religious group" – in furtherance of **Hamas's declared genocidal agenda**.

Israel has also come under **attack from the north and the north-east by Iranian proxies, including Hezbollah**, while Iran itself has expressly threatened to attack Israel from additional fronts. Hundreds of rockets, anti-tank missiles, and other projectiles have been fired from Lebanon and Syria into Israel, resulting in death and injury to civilians and soldiers. These repeated attacks from Lebanon and Syria are in **violation of general international law**, as well as of **UN Security Council Resolution 1701** (2006) and the 1974 **Israel-Syria Disengagement Agreement**, respectively. Multiple **ballistic missiles and drones have also been fired from Yemen**, but intercepted before reaching Israel.

**Many cities and communities in southern Israel have been evacuated**, and it is unclear when their residents will be able to return home given the ongoing hostilities and widespread destruction of houses and residential areas. **Northern communities** close to the Lebanese border **have also been evacuated**. Currently, **over 200,000 Israelis are internally displaced**.

Internationally, **incidents of antisemitism** against Jewish communities and individuals **have risen dramatically in number**, and Israel has had to issue travel warnings for Israelis in certain countries in light of concrete terror threats.

**ANNEX 2**

**LEGAL ASPECTS OF THE HAMAS-ISRAEL CONFLICT 2023**

*Updated to November 2, 2023*

## 1. The Legal Framework: Law of Armed Conflict

▪ The heinous attacks launched by Hamas and Islamic Jihad against Israel on October 7, 2023, which left over 1,400 Israeli and foreign nationals murdered and thousands more wounded, and the continuing attacks since then, took place in the context of an **ongoing armed conflict** between Israel and Hamas and other terrorist organizations in Gaza. For this reason in particular, legally speaking, these attacks do not necessitate an analysis of the conditions under which Israel may resort to the use of armed force (the *jus ad bellum*).

▪ In the context of these hostilities, **Israel has the right, and indeed the duty, to respond in order to protect its citizens and territory from the ongoing deadly attacks which it is facing**. As reiterated by the highest levels of Israel's political and military leadership, **Israel is committed to conducting its military operations in accordance with the rule of law, including the law of armed conflict (LOAC), also known as international humanitarian law (IHL)**. Israel is a party to many international conventions that form part of LOAC and abides by all applicable rules of customary international law, including those embodied in conventions to which it is not a party (such as the 1977 Additional Protocols to the Geneva Conventions).

▪ **In stark contrast, Hamas has committed horrific war crimes and crimes against humanity and continues to target Israeli civilians indiscriminately while using the residents of the Gaza Strip as human shields**.[1] It has shown complete disdain for the law, for elementary considerations of humanity, and for the well-being of the civilian population under its control.

▪ **As Israel does not exercise effective control over the Gaza Strip, the legal framework governing the present hostilities is not the law of belligerent occupation, but rather the rules of LOAC, in particular those governing the conduct of hostilities**. The powers exercised by Israel with respect to Gaza since its Disengagement from this territory in 2005, when its military and civilian presence was entirely removed, derive primarily from LOAC and Israel's sovereign rights under international law more broadly, as well as Israeli-Palestinian agreements where applicable. Hamas has been in control of Gaza since its violent takeover in 2007.

▪ The precise classification of the armed conflict between Israel and Palestinian terrorist organizations operating in the Gaza Strip (as an international armed conflict (IAC) or a non-

[1] In targeting and terrorizing Israeli civilians with rockets and mortars, Hamas violates fundamental customary norms of LOAC that prohibit a party to hostilities from deliberately making civilians the object of attack, and that prohibit acts or threats of violence primarily intended to spread terror among the civilian population. This customary rule is reflected in Article 51(2) of the Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (June 8, 1977), and Article 13(2) of the Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (June 8, 1977).

international armed conflict (NIAC)), and the question whether there is a single or several ongoing armed conflicts taking place in parallel, have been a matter of debate.[2] In any event, **in practice Israel conducts its present military operations in accordance with the rules of LOAC governing both international and non-international armed conflicts**, including the rules relating to distinction, precautions, and proportionality in carrying out attacks. In certain respects, Israel also conforms to more stringent obligations that are applicable to IACs only.

## 2. Hostages Taken into Gaza

▪ **At least 247 Israelis and foreign nationals were abducted by Hamas, Islamic Jihad and other groups and taken hostage in Gaza**, the majority of them being civilians, including women, children, infants, the elderly (including Holocaust survivors), and persons with disabilities. Four hostages were released and one rescued. The exact number of hostages remains unknown, as is their medical condition and whether they are alive. The hostages are **denied visits by the ICRC and any communication with the outside world**. Hamas has **threatened publicly to execute hostages**. Forty **Israelis are still unaccounted for**.

▪ **International law strictly prohibits the taking of hostages**, an act that **constitutes a grave breach of the Geneva Conventions and a war crime**. Offences perpetrated against hostages in a systematic manner also amount to **crimes against humanity**. **All States and international organizations must continue to demand the immediate and unconditional release of all hostages.**

## 3. Israel is Committed to Complying with LOAC

▪ The State of Israel is committed to complying with international law when conducting its military operations. The IDF **has incorporated the rules of LOAC into all aspects of military operations**, including through legal training, operational procedures and plans, ongoing legal advice to different levels of IDF command, and robust and independent mechanisms to investigate allegations of IDF misconduct. Accordingly, **Israel consistently applies the rules of LOAC, including those concerning distinction, precautions, and proportionality in carrying out attacks**. This is notwithstanding the fact that the other parties to the conflict violate these rules willfully and systematically.

▪ **Distinction**: As repeatedly affirmed by Israel's senior political and military leadership, the IDF is fighting Hamas and the other terrorist organizations in Gaza, not the civilian population. In accordance with the principle of distinction, **the IDF only targets persons who are members of organized armed groups or civilians directly participating in the hostilities, and objects that qualify as military objectives**. In terms of objects, Israel applies the customary definition of "military objectives" as reflected in Article 52 of Additional Protocol

[2] Israel's Supreme Court determined in 2008 that the armed conflict was an IAC, referring to its trans-boundary nature. Many international law experts consider that the proper classification nowadays would be a NIAC, especially given developments since the 2008 decision. Various courts, States, and legal experts have characterized armed conflicts of this kind as NIACs, given that one or more parties to the conflict are non-State entities.

I of the Geneva Conventions.[3] The special protection afforded under international law to objects such as hospitals is reflected in IDF procedures, and the IDF implements further restrictive measures for additional sites such as schools, places of worship, and UN facilities.

**As is well documented, Hamas systematically and unlawfully embeds its military assets within heavily populated areas, and carries out its military activities amongst, behind, and under its own civilians**.[4] In this regard:

- Hamas's military infrastructure, command, militants, communications, and weapons are deliberately located within residential, commercial, and other civilian buildings, including specially protected sites,[5] **for the most part in the densest parts of Gaza**. **Hamas exploits the civilian population as human shields.**[6]
- **Hamas systematically conceals some of its most valuable and extensive military centers and assets in and underneath hospitals, including the *Al-Shifa* hospital,** which is the largest hospital in Gaza.
- Hamas prepared and initiated **the October 7 attacks from within civilian neighborhoods adjacent to Israeli territory**, and used these areas to continue raids into Israeli territory in the days following.
- A central part of Hamas's military strategy and activity relies on an **extensive tunnel network**, assessed to extend to hundreds of kilometers underneath densely populated areas and sensitive sites throughout Gaza.
- In expectation of the IDF's ground activities, Hamas has **booby-trapped civilian buildings and roads** throughout the Gaza Strip, and uses or designates numerous civilian buildings as **posts for sniper fire, the launch of anti-tank missiles, and intelligence gathering**.

Given this reprehensible strategy, **many ostensibly civilian objects may become legitimate targets**, as LOAC prescribes that civilian objects become legitimate military targets when, *inter alia*, they make an effective contribution to military action by their purpose or use. Moreover, under LOAC, Hamas militants who fail to distinguish themselves from the civilian population are legitimate targets, as are civilians taking direct part in hostilities. As a result, it cannot be concluded from the mere fact that seeming "civilians" or "civilian objects" have been targeted, that an attack was unlawful.

[3] According to this Article, "military objectives" are limited to "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."

[4] Customary international law obligates parties to an armed conflict to take various steps to mitigate, to the extent feasible, the harm to the civilian population under their control resulting from the dangers of military operations. This customary rule is reflected in Article 58 of Additional Protocol I and Article 13(1) of Additional Protocol II.

[5] Hamas exploits hospitals and ambulances to conduct military operations, despite the special protection afforded these units and transports under customary international law, as well as the special protection afforded to the sick and wounded civilians often present in these facilities. These customary rules are reflected in Articles 10, 12(1), and 21 of Additional Protocol I; Articles 8 and 11 of Additional Protocol II; Article 18 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949; and Article 19 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949.

[6] Using the presence of civilians to shield military targets from attack is prohibited by customary international law. This customary rule is reflected in Article 51(7) of Additional Protocol I.

▪ **Proportionality**: Israel also abides by the rule of **proportionality** in conducting attacks. According to this rule, it is prohibited to carry out an attack when the expected incidental loss of civilian life, injury to civilians, or damage to civilian objects will be **excessive** in relation to the **concrete and direct military advantage anticipated** from the attack.[7] Under customary international law, military advantage may include a variety of operational considerations such as disrupting enemy activities, weakening the enemy's military forces, gaining ground, and protecting the security of one's own forces and civilians. Military advantage moreover may refer to the advantage anticipated from an operation as a whole.

In the context of current hostilities, the IDF seeks to gain military advantage in a variety of ways, including by targeting Hamas **command and control centers, militants, military offices, weapons depots, launch sites and tunnel networks**. The military advantage anticipated from these attacks includes destruction of military infrastructure and incapacitation of command activities. Attacks against military objectives have also been conducted in **areas used by Hamas as staging points to carry out raids against Israel** and to fire **anti-tank missiles** and mortar barrages into Israel, particularly areas that are close to the Israel-Gaza border. The IDF is also attacking Hamas's **surveillance and attack positions** deeper in Gaza and **tunnels** that form part of the wider network intended for a wide range of military purposes, including attacks against Israeli civilians and tactical advantages over IDF soldiers within Gaza. These various attacks are also intended to serve the **larger goal of rescuing the hostages and destroying the overall ability** of Hamas and other terror groups to conduct military operations against Israel. Experience shows that **previous operations** in Gaza, which were more limited in scope, did not remove the threat to Israel.

Estimating **expected civilian harm** can be very challenging, especially when operating in a **complex and dense urban environment** where civilian presence is dynamic and often hard to ascertain. The IDF invests significant resources, both routinely in preparing for hostilities and throughout active hostilities, in collecting intelligence that would support real-time assessment of expected civilian harm. Due to Hamas's tactics of embedding itself within the civilian population and preventing the evacuation of civilians, incidental damage to civilians and civilian objects is, unfortunately, in many cases unavoidable despite mitigation efforts.

The proportionality assessment – with respect to both civilian harm and military advantage – is based on the facts **as they were understood in real-time**, and on the military commander's judgment at that time, **not on hindsight**. To determine compliance with the proportionality principle it is vital, therefore, to have knowledge of the available facts and the judgement calls made at the time of the attack. If the attack results in more collateral damage than expected, this does not necessarily indicate a violation: compliance is **conduct-oriented**, **not result-oriented**.

[7] This customary rule is reflected in Article 57(2)(b) of Additional Protocol I, which states that "an attack shall be cancelled or suspended if it becomes apparent … that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."

▪ **Precautions**: LOAC also requires that parties to hostilities take **precautions in attack** that are feasible under the operational circumstances to **minimize** the **expected incidental loss of civilian life, injury to civilians, and damage to civilian objects**.[8] What is **feasible** under international law amounts to what is **practically possible taking into account the circumstances at the time**. In implementation of this obligation, for example, the IDF employs specific procedures for determining targets and carrying out attacks (including the choice of weapons and munitions). In practice, some of the IDF's precautionary practices go beyond its legal obligations.

Additional precautionary measures include providing **effective advance warnings** of attacks where circumstances permit.[9] The IDF has **dropped leaflets** over areas of expected attacks with instructions to evacuate and how to do so, **broadcasted over radio and through social media** messages warning civilians to distance themselves from Hamas operations, and in some cases made **individual phone-calls** to occupants of targets, warning them of impending attacks. Where circumstances do not permit providing effective advance warning before an attack – such as when the strike is aimed at a militant who may exploit the warning to escape, or when there is insufficient time to provide a warning (for example, when an enemy attack is imminent) – there is no legal requirement to do so.

▪ **The IDF maintains an independent Military Advocate General Corps (MAG Corps), which provides ongoing legal advice to the IDF on a range of operational matters**, including targeting, weaponry, and detainees. IDF legal advisers are not subject to the IDF chain of command on professional matters, but report directly to the Military Advocate General, whose conduct is subject to scrutiny by the Israeli Attorney General. IDF legal advisers work closely with operational forces to ensure that international law is integrated into orders, procedures, doctrines, and combat decision-making. In addition, **the Office of the Attorney General provides international law advice to the Cabinet and the Government, and Israel's Supreme Court has general jurisdiction to exercise judicial oversight, including during hostilities**. Petitions have already been submitted to the Supreme Court during the present hostilities by civil society organizations and individuals.

## 4. <u>Temporary Evacuation of Northern Gaza</u>

▪ **Since October 12, the IDF has repeatedly called on civilians, by various means** (including leaflets, messages broadcasted over radio, social media, individual phone-calls, and via third parties) **to evacuate to the southern part of Gaza as a temporary measure until the hostilities cease**. To this end, the IDF has also published **evacuation routes** in order to allow safer civilian passage. The IDF has **repeatedly delayed** intensifying its operations in northern Gaza so as to allow for continued evacuation.

▪ **Hamas consistently and forcibly acts to frustrate these efforts,** including by setting up roadblocks, threatening civilians not to leave, and issuing calls to ignore IDF recommendations to evacuate. It does so knowing that the IDF seeks to minimize civilian harm, wishing to both hinder the IDF's operations, and, abhorrently, to maximize Palestinian casualties in order to

[8] This customary rule is reflected in Article 57(2) of Additional Protocol I.
[9] This customary rule is reflected in Article 57(2)(c) of Additional Protocol I, which states that "effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."

invite condemnation of Israel rather than of its own inhumanity. In any event, **the IDF does not assume that there are no civilians in areas or sites where advance warnings had been given**: strikes in such locations, too, are conducted in accordance with LOAC, including the principles of distinction, proportionality and precautions in attack.

▪ In addition, the IDF has **designated a 'humanitarian zone' in the southwestern part of Gaza**, where international agencies are working to provide assistance and to which many relief supplies coming in through Egypt have been directed.

## 5. The Humanitarian Situation

▪ Israel wishes no harm to civilians and is committed to addressing the humanitarian needs of those suffering as a result of Hamas's brutality and instigation of these hostilities.

▪ It is not possible to effectively respond to the humanitarian situation in Gaza without appreciating that the **greatest humanitarian threat to Palestinians in Gaza is that they live under the control of a brutal terrorist regime that has shown no regard for their well-being, used its resources for massive military buildup and attacks, and has systematically taken for itself the aid designated for the civilian population**.

▪ **Prior to the barbaric Hamas attacks of October 7, and despite significant challenges, Israel worked, together with other stakeholders, to improve the socio-economic situation of the civilian population in Gaza**, including by allowing the entrance into Israel of almost 20,000 Gazan workers per day; operating border crossings; transferring tons of goods into Gaza; and facilitating exports from Gaza. The humanitarian situation has significantly deteriorated as a result of the attacks of October 7, including due to **Hamas's fire on supply lines and border crossings**, its **exploitation of supplies destined for civilian use,** and its **hoarding of supplies** (such as fuel) for military purposes.

▪ Under LOAC, parties to an armed conflict are required to **allow and facilitate access of consignments of supplies essential for the survival of the civilian population** if the civilian population is not adequately provided with such supplies.[10] This obligation is subject under

[10] In this regard, see Article 23 of the Fourth Geneva Convention, Article 70 of Additional Protocol 1, and Article 18(2) of Additional Protocol II. Article 23 states that:

> "Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.
> The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:
> (a) that the consignments may be diverted from their destination,
> (b) that the control may not be effective, or
> (c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

LOAC to important conditions, including that there are no serious reasons for fearing that the consignments will be diverted from their civilian destination or otherwise provide a definite advantage to the enemy's military efforts.

▪ A designated Israeli unit (COGAT) **closely monitors the humanitarian situation** and the needs of the civilian population in Gaza, and coordinates humanitarian activities with relevant international actors and agencies. An **increasing number of trucks carrying water, food, medical equipment, and hygiene supplies have been passing into Gaza** through the Rafah Crossing between Gaza and Egypt, after security checks. Israel is continuously working with third parties to allow for the provision of additional aid, and to further increase the scale and pace of such assistance, while ensuring that it reaches the civilian population and is not diverted by Hamas. Israel is doing so even though Hamas possesses many essential supplies which it is deliberately withholding from its civilians, and that some of the consignments entering Gaza include supplies that are not currently lacking.

▪ As indicated, *inter alia*, by the entrance of supplies into Gaza through the Rafah Crossing and the provision of water from Israel to Gaza, a matter of fact and law there is no 'siege' on Gaza (even though a siege on enemy forces is not unlawful under international law subject to certain safeguards, as is also evident from the military manuals of various states).

▪ Currently, **massive stockpiles** of fuel, medical, and other supplies, all designated for hospitals and general civilian use, have been **hoarded by Hamas** and used to sustain its military operations and attacks on Israel (UNRWA has publicly stated recently that Hamas stole tens of thousands of liters of fuel from its warehouses). Genuine concern for the humanitarian situation must include an **unequivocal demand from Hamas to release the reserves** it is denying the civilian population, and ensuring that **effective mechanisms** are in place so that humanitarian assistance reaches its intended civilian destination and is not sustaining the terrorists that are endangering both Israeli and Palestinian lives.

▪ At all times, addressing the legal and practical challenges of humanitarian assistance in these exceptional circumstances requires accurate knowledge of the facts, including that **Hamas fire has damaged 9 out of 10 electricity lines** coming from Israel (which supply about 50% of the electricity in Gaza, the rest being produced locally); that on October 7 **Hamas attacked and significantly damaged the main crossing** for Palestinian civilians into Israel (through which, prior to October 7, almost 20,000 Gazan workers passed daily), killing and abducting Israeli personnel; that in recent years **Israel has facilitated the installation of alternative energy sources** (such as solar panels) for most essential services in Gaza; that 90% of Gaza's water does not ordinarily come from Israel; and that Israel still supplies water to Gaza (including by fixing pipes damaged by Hamas fire). Israel remains committed to ensuring and expanding access to humanitarian assistance by Palestinian civilians, but international law does not require it to do so in a manner that enables that assistance to be diverted or exploited so as to sustain Hamas's capabilities to attack Israel and its citizens.

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The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.
Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed."

## 6. Expansion of Ground Activities

▪ The expansion of the IDF's ground activities has a **clear military purpose**: to reach the heart of Hamas's military activity and assets, which are systematically and unlawfully embedded within urban areas, including within and underneath civilian infrastructure. This **cannot be achieved by aerial operations only**. The ground activities are **temporary** and are solely intended to contribute to the overall aim of rescuing the hostages and destroying Hamas's capability to carry out attacks.

▪ During its ground activities, the IDF is encountering fierce fighting with Hamas and other terrorists, who **deliberately use the urban terrain and the civilian population** to frustrate IDF operations and exploit unintended civilian harm for propaganda purposes. Civilian sites are being used by Hamas for sniper posts, intelligence gathering, launching anti-tank fire, and hiding tunnel shafts for purpose of killing and kidnapping more Israeli soldiers. Many houses and roads are booby-trapped. Vast tunnels and bunkers lie under entire neighborhoods, and command centers are located under specially protected sites such as hospitals. The fighting is made even more difficult given that Hamas exploited the advance notices given by the IDF to Gazan civilians in order to prepare ambushes and defenses. IDF soldiers are contending with these challenges in their mission to rescue the hostages and defeat Hamas, and are using force in a dense urban area, including for force protection. In furtherance of this mission, IDF soldiers have been killed and wounded.

## 7. Lessons Learned and Allegations of Misconduct

▪ **The IDF has in place robust and independent mechanisms for reviewing its conduct, implementing lessons learned, improving its practices and procedures, and examining investigating allegations of misconduct.** These mechanisms are subject to review by Israel's Attorney General as well as Israeli courts, including the Supreme Court. Naturally, examining individual incidents occurring during largescale and intensive hostilities is challenging, and obtaining a full factual picture can be difficult and may take time.

▪ **Civilian harm is not of itself indicative of misconduct, as even the most carefully planned and lawful military operations might put civilians at risk, especially in cases of intense urban warfare**. Tragic outcomes do not in and of themselves point to unlawful conduct.

▪ **The *Al-Ahli* hospital incident serves as a clear reminder that great caution should be exercised in attributing responsibility for incidents without evidence, especially on the basis of statements made by Hamas organs, which have a documented record of fabricating allegations and must not be considered a reliable source**. Following the blast at the hospital compound, the Hamas Ministry of Health immediately blamed Israel for the attack and the killing and wounding of over 500 people. This allegation was reported in numerous media outlets without it being made clear that it was unverified, leading to worldwide violent incidents of unwarranted protest against Israel and the cancellation of an international summit intended to discuss humanitarian aid to Gaza. The IDF subsequently proved that the blast was the result of a rocket misfired by the Islamic Jihad, which landed in the hospital parking lot and apparently caused far less casualties than was claimed. Independent assessments by other intelligence agencies confirmed this account.

▪ **Hamas has a documented practice of inflating and distorting casualty figures**. For example, **Hamas does not distinguish between militants and civilians** in its reporting, **nor does it declare which casualties were a result of Hamas's own fire**. Hamas's disinformation is not limited to Palestinian casualties: Hamas leadership figures have even stated in international media interviews that no Israeli civilians were killed by Hamas on October 7, despite releasing in Arab channels propaganda videos taken by Hamas militants clearly documenting the systematic and wanton murdering of civilian women, children, and men. **No Hamas official, or any entity controlled by Hamas or subject to Hamas intimidation, can be relied upon as a trustworthy source**.

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## ANNEX 3

## ADDITIONAL RESOURCES ON FACTS AND LAW

*Updated to November 2, 2023*

- **Factual updates on the hostilities** - https://www.idf.il/en/mini-sites/idf-newsletter-daily-summaries-of-the-hamas-israel-war/

- **Statements by Israeli officials on Israel's commitment to international law** - https://x.com/israelmfa/status/1715795987745153041?s=51&t=0z_ejRvgqa-Pjf0jVxYh7g

- **Visual evidence of the October 7 attacks** (official; warning, disturbing images) - https://drive.google.com/file/d/1mlbMlU9aW8uc-DZUYXA2XrxWbXR8qz3o/view?usp=drive_link

- **Interactive map detailing the October 7 attacks** (unofficial) - www.oct7map.com

- **Survivor testimonies** (unofficial) - https://www.instagram.com/survived.to.tell/ and https://www.october7.org/

- **Visual records of the October 7 attacks** (unofficial; warning, disturbing images) - https://t.me/s/southfirstresponders

- **IDF Conduct in Accordance with LOAC** (2014 Gaza Conflict) - https://mfa.gov.il/ProtectiveEdge/Pages/default.aspx, Chapter VI

- **Hamas Violations of International Law** (2014 Gaza Conflict) - https://mfa.gov.il/ProtectiveEdge/Pages/default.aspx, Chapter IV

- **IDF Mechanism for Examination and Investigation of Misconduct** (2014 Gaza Conflict) - https://mfa.gov.il/ProtectiveEdge/Pages/default.aspx, Chapter VII

- **Assessing Palestinian Fatality Figures** (2014 Gaza Conflict) - https://mfa.gov.il/ProtectiveEdge/Pages/default.aspx, Annex.

# Hamas-Israel Conflict 2023: Frequently Asked Questions

*Updated to 8 December 2023*

*This paper addresses frequently asked questions regarding the current hostilities instigated by the brutal Hamas attacks of October 7, 2023.*

*On legal aspects of the conflict, see also the Key Legal Aspects paper published on November 2, 2023, entitled "Hamas-Israel Conflict 2023: Key Legal Aspects."*

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1. ***What are the objectives of Israel's military operation?***
2. ***What is the cause of Palestinian civilian casualties?***
3. ***What is Israel doing to mitigate civilian casualties?***
4. ***Why has there not been a permanent ceasefire agreement?***
5. ***What is being done to facilitate the supply of humanitarian aid to Gaza?***
6. ***Have Israel's past restrictions on Gaza contributed to the current situation?***
7. ***What is Israel's response to the charge its actions against Hamas amount to collective punishment of the civilian population?***
8. ***Why is Israel's response to Hamas's attacks proportionate?***
9. ***Is Israel committed to international law in the face of Hamas's consistent violations of that same law?***
10. ***What is the response to the charge that a "genocide" is taking place in Gaza?***

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# 1. What are the objectives of Israel's military operation?

*Israel is seeking to secure the release of the infants, children, women, and men being held as hostages in Gaza, and to deny Hamas and other armed groups in Gaza the capacity to continue attacking its citizens and territory as they have explicitly vowed to do.*

The incessant indiscriminate firing of rockets from Gaza into Israel, and the horrific massacre, widespread and sadistic torture, sexual violence and hostage-taking that was perpetrated on October 7, have resulted in over 1,200 murders, thousands more injured, and over 240 infants, children, women and men taken hostage. These actions – which Hamas openly vows to commit again – are something no country would tolerate, and every country would act against. Pursuant to its right and obligation to protect itself and its citizens, Israel's immediate goal is to take the legitimate measures necessary to rescue all the hostages and to ensure that Gaza will never again serve as a launch pad for terrorism.

In the longer term, Israel seeks to work with global and regional partners to create a reality in which the Palestinian population in the Gaza Strip has the power to govern itself but not the capacity to threaten Israel and its citizens. Israel does not seek to occupy Gaza or to permanently displace its civilian population, but to advance a future of peace and security for both Israelis and Palestinians alike.

Iran and its proxies, including the terrorist organizations Hamas and Hezbollah, seek to plunge the region into a future of endless hatred and violence. They want their cult of death to indoctrinate the minds of yet another generation. And they want to deny Israelis, Palestinians, and a host of Arab states the ability to advance a future of further integration, prosperity, and coexistence across the region. We cannot allow them to succeed.

# 2. What is the cause of Palestinian civilian casualties?

*The brutal massacre of October 7 initiated armed hostilities in which Hamas has sought to use the Palestinians civilian population as its shield. While Israel is committed to minimizing civilian harm and to abiding by international law, the military strategy of armed groups in Gaza is grounded in contempt for the law and the perverse exploitation of civilians.*

*For Israel, every civilian casualty is a tragedy to be avoided wherever possible. For Hamas, civilians are to be used as a shield against IDF's attack, and their death as pawns in a propaganda campaign. Moral outrage for civilian casualties should be directed first and foremost at the armed groups who continue to deliberately endanger*

*Israeli and Palestinian lives, and who took over 240 hostages into Gaza, not at Israel that is seeking to minimize civilian casualties in the context of its legitimate military operations and in the face of Hamas's inhumanity and the brutal battlefield that Hamas has created.*

*Any adequate assessment of incidents of civilian casualties in the current hostilities requires an appreciation of the following:*

- ***The realities of urban warfare in Gaza and the widespread and systematic use of civilians as human shields***: As the armed forces of other democratic States have experienced in recent decades, civilian casualties are a harsh fact of modern urban warfare. This is all the more so as Hamas has spent the last 16 years systematically embedding and dispersing its military operations and assets throughout the entirety of Gaza, viewing Palestinian civilians as expendable human shields. While Israel is seeking to minimize civilian harm, Hamas is deliberately seeking to maximize it in the hope that the international community will condemn Israel rather than Hamas's strategy to deliberately put civilians in harm's way in the first place. For examples of Hamas's strategies and the IDF's operations in response, see here.

Hamas purposely seeks to drag the fighting into the urban terrain, such that residential areas serve as battlegrounds for Hamas to launch attacks against Israel with the resulting dangers for civilians and civilian infrastructure. Hamas built an extensive warren of underground tunnels throughout the Gaza Strip, with access points located in homes, mosques, schools and even hospitals, bringing the fighting (and ensuing damage) to the heart of the civilian surroundings. For examples of Hamas's military use of hospitals and ambulances, see here and here.

Hamas also directly endangers civilians by placing explosive materials inside and under residential buildings, booby-trapping civilian structures, and mining roads used by the civilian population. Such deplorable actions result in direct harm to civilians present in or near such sites.

Moreover, the placing of weaponry inside residential buildings by Hamas has led to secondary explosions that cause significantly more harm to the surroundings than the initial IDF attack alone. For an example of secondary explosions that caused damage to the Al Quds Hospital opposite a target containing Hamas militants, see here.

- ***Hamas does not provide any protection for its population, and is actively preventing civilians from protecting themselves***. Hamas has not provided any protection or safety measures for the Gazan population from the ravages of war. Instead, it has openly said that its tunnels are only for its fighters, and that it has no responsibility for protecting Gazans. Shockingly, Hamas is making every effort to keep civilians in areas of hostilities. It has openly called on the civilian population to ignore IDF warnings and recommendations to temporarily evacuate, it has set up roadblocks to stop people from leaving dangerous areas, threatened individuals not to leave, and, according to some reports, shot civilians trying to leave so as to deter others. In doing so, Hamas directly endangers its own population. See, for example, here and here.

- ***The IDF is compelled to operate extensively throughout Gaza***. The rules governing the IDF's conduct of hostilities in Gaza have not changed. In previous rounds of violence, however, Israel did not aim to defeat Hamas militarily, but set more limited goals to degrade Hamas's military capabilities and achieve deterrence. In light of Hamas's heinous attacks on October 7, its incessant attacks on Israel since then, and its stated aim to pursue the destruction of Israel and death of its citizens (see, for example, here), Israel has been compelled to set as its goals both the release of hostages and the dismantling of Hamas's military capabilities. To achieve this objective the IDF is operating throughout Gaza, against many types of military objectives (rocket launching sites, weapons depots, anti-tank fire positions, sniper posts, command and control assets, militants themselves, underground military assets, and so on). As a result, and in light of the extent of Hamas's control and presence throughout Gaza, the IDF is forced to operate much more extensively than in previous hostilities, which as noted above had more limited goals. Due to Hamas's strategies, these attacks are mostly carried out in dense urban environment, against an adversary that seeks to use civilians to shield its operations. Under these circumstances, and considering the scope and scale of the IDF's military attacks and Hamas's abhorrent strategy, the overall impact on the civilian population in Gaza – including the number of casualties – will inevitably and tragically be larger than in past hostilities, even though the IDF is committed to upholding the law and these casualties are neither the intent nor the wish of the IDF. For examples of the IDF's operations in Gaza, see here.

- ***Over 1,000 missiles fired by Hamas and other armed groups have landed in Gaza.*** These rockets, indiscriminately fired at Israel, have instead exploded within the Gaza Strip. Evidence shows that these rockets exploded in schools and near hospitals, causing untold civilian harm. The indiscriminate nature of this fire, and the likelihood that many hundreds of these rockets have landed in dense urban areas suggest that they are a significant cause of civilian casualties. See, for example, here.

- ***Civilian casualties under international law***. As noted below, under the law of armed conflict (also known as international humanitarian law or the laws of war), the principle of proportionality in attacks requires an individual proportionality assessment for every individual attack. An overall casualty figure does not on its own indicate unlawfulness. According to the principle of proportionality in attacks, an attack will be prohibited if the expected civilian harm would be excessive in relation to the concrete and direct military advantage anticipated. This rule acknowledges that civilian casualties may be an inevitable, though undesirable, result of military action. Proportionality requires that an assessment of compliance rests not on the outcome of an attack but rather on the commander's judgement at the time of the attack based on the information available to him/her at the time. It follows that the legality of an individual attack cannot be judged based merely on its results. For more information about this principle under the law of armed conflict, see the Key Legal Aspects paper, and Chapter VI of the 2014 Gaza Conflict Report.

- ***Veracity of Hamas's statements***. Every civilian death is a tragedy, and the hostilities instigated by Hamas, and the strategy it has adopted, have led to a significant number of civilian casualties. At the same time, there is good cause to be doubtful about

the casualty figures coming out of Gaza. All these statistics, including those reported by the UN and humanitarian agencies, come from Hamas's Ministry of Health or other Hamas authorities which cannot be seen as a reliable reference and which do not disclose information about militant deaths. Nor does Hamas disclose which casualties are the result of its own actions, or the actions of other armed groups, such as failed rocket launches and other Hamas tactics described above. Based on previous rounds of fighting and reliable testimony, and despite current reports, it is clear that some of the casualties are in fact Hamas militants and not civilians, some of them recruited as terrorist fighters even though they are under the age of 18. Reports coming out of Hamas authorities in Gaza and cited, for example, by UN OCHA, raise additional questions of distortion and misrepresentation, including by seeming to claim on certain days that more women and children have been killed than the total number of fatalities listed, or referring to numerous days on which there were virtually no male casualties at all. For a historical analysis of Hamas's reporting on casualties, see the Annex of the 2014 Gaza Conflict Report.

## 3. What is Israel doing to mitigate civilian casualties?

*Israel's military operations in Gaza are solely directed at Hamas, Islamic Jihad and other armed groups. The IDF does not intentionally target civilians or seek to harm the civilian population. As described above, the present hostilities were forced upon Israel, and while the IDF is bound to mitigate civilian harm in accordance with the law of armed conflict, it is first and foremost Hamas that bears the responsibility for the widespread suffering it has caused by instigating the hostilities on October 7 and using civilians as human shields.*

The IDF employs many measures to mitigate civilian harm when conducting its operations. Such measures are applied in the targeting planning process (and include considering the type of weaponry and munitions to be used and the timing of attacks), as well as aborting attacks when the expected civilian harm might be greater than initially expected. While the results of attacks that are carried out are apparent, countless attacks have been aborted or avoided completely in order to prevent harm to civilians.

In order to provide effective advance warning and mitigate civilian harm, the IDF has also encouraged civilians to temporarily evacuate from areas of intensive hostilities and from individual targets. The IDF has invested massive resources towards these efforts, including (to date) sending over 15 million text messages, conducting over 12 million pre-recorded phone calls, airdropping over 4.5 million leaflets, publishing messages on social media, radio and TV in Gaza, communicating with international organizations on the ground in Gaza, and conducting over 45,000 individual phone-calls urging people to temporarily leave areas of hostilities and individual targets. IDF messages often include detailed information as to when to evacuate (including from specific areas and individual targets), the safe routes to be used, and where aid may be obtained. Since

October 12 the IDF has been urging civilians to temporarily evacuate northern Gaza in anticipation of intensive fighting and the IDF's ground operations in that area. To facilitate these evacuations, the IDF has unilaterally established humanitarian corridors and local pauses in the fighting. For examples of these efforts, see here, here, here and here.

The IDF is well aware of the increased number of civilians in southern Gaza, and utilizes the entirety of the measures described above in order to mitigate harm to civilians in these areas. It is impossible to dismantle Hamas's military capabilities without operating in southern Gaza – from where the overwhelming majority of rockets into Israel in recent weeks have been launched, from where many senior Hamas commanders are directing operations, where Hamas maintains numerous military assets, and where IDF intelligence indicates that hostages are being held.

Specifically, the IDF is making efforts to provide effective advance warning of its operations in specific areas. For example, the IDF is employing a mechanism that allows for communicating evacuation recommendations to civilians in specific neighborhoods in Gaza using various tools, and which collates real-time and constantly updated data regarding the civilian environment. This system utilizes a detailed map of Gaza, with designated numbers for specific neighborhoods, and which has been shared with the public in Gaza and with international organizations on the ground in order to create a 'common language' directly with the civilian population; see, for example, the map as published on the IDF website (see here; Arabic). Using this numbered system, the IDF provides information to Gazans where to evacuate, on what routes and where shelters may be accessed, in advance of intensified operations. See, for example, an announcement on the IDF's Arabic social media.

This mechanism is an effort by the IDF to communicate directly with the Gazan population in response to Hamas's failure to provide protection for its own population, and to help them contend with Hamas's repeated efforts to endanger civilian lives by keeping them in areas of increased danger.

The dedicated unit that maintains this system (the 'Civilian Harm Mitigation Unit', consisting of senior IDF commanders, intelligence officers, Arabic speaking soldiers, legal advisors and other professionals) also constantly monitors in real time the implementation of these evacuation recommendations, including by using open-source tools such as social media, as well as intelligence sources. Updated data is continuously fed to IDF air, naval and ground forces operating in Gaza to increase their awareness of the civilian environment in areas of operation. While it is impossible to completely avoid civilian harm for the reasons detailed above, this mechanism has proven effective in the current hostilities and has saved many lives.

The IDF is aware that communications in Gaza is intermittent, and as such has made extensive efforts to distribute the map and subsequent messaging via multiple channels, including radio and TV broadcasts in Gaza, airdropped leaflets, via international organizations in Gaza as well as via social media and text messages.

In addition to the abovementioned, Israel is making efforts to facilitate medical treatment for civilians harmed in the fighting. Israel has facilitated the establishment of field hospitals in southern Gaza, a floating hospital in the sea and is working with third parties to establish additional field hospitals. Israel has facilitated the movement of people out of Gaza for the purpose of receiving medical treatment, has facilitated the entry of medical supplies into Gaza, and has itself provided medical supplies to patients and staff in hospitals located in areas where IDF ground forces are operating. See, for example, here.

Israel's efforts in this regard are in implementation of its legal obligations as well as an expression of its values and commitment to humanity. Nevertheless, it must be appreciated that the main threat to the civilians of Gaza is that they live under the rule of a genocidal terrorist organization that disdains both the law and human life. For as long as that rule remains both Israelis and Palestinians will be endangered.

## 4. Why has there not been a permanent ceasefire agreement?

*A ceasefire would allow Hamas to get away with murder – literally – and prepare to commit it again.*

While the IDF has unilaterally established humanitarian corridors, taken pauses for Palestinian civilians to evacuate, and has agreed to a temporary operational pause to allow for the release of hostages, Israel cannot implement a permanent ceasefire with an organization that still holds infants, children, women and men as hostages, continues attacking Israel by land, sea and air, and retains both the capacity and intent to perpetrate terrorist attacks against its citizens. Hamas has stated expressly that it will continue attacking until Israel is completely destroyed. Its genocidal Charter, the statements of its leaders, and its actions on the ground demonstrate an unequivocal resolve to continue to kill as many Israelis and Jews as possible.

The barbaric massacre of October 7, and the continued firing of barrages of thousands of rockets into Israel since then, are the clearest proof that ceasefires with this terrorist organization are neither sustainable nor effective. Hamas has used every ceasefire in the past to rearm, to embed itself further in the civilian population, and to plan and execute new atrocities. Indeed, a ceasefire was essentially in place on October 6; Hamas broke that ceasefire, too.

Temporary ceasefires during past hostilities have also systematically been broken by Hamas. In the 2014 Gaza Conflict, for example, Hamas used a temporary ceasefire to conduct an attack on IDF forces, killing soldiers and abducting the body of Lieutenant Hadar Goldin, which is still held by Hamas today (for more information, see Chapter III of the 2014 Gaza Conflict Report).

In the current hostilities, Hamas violated the framework under which the IDF implemented an operational pause to allow for the release of hostages, by detonating

explosives adjacent to IDF forces in northern Gaza (see here), and later violating the agreed terms as well as firing rockets into Israel.

No State that shares a border with a genocidal terrorist organization would agree to a ceasefire under these conditions. No State would fail to protect its citizens in this situation. Israel's citizens are no less deserving of protection.

In the horrendous reality that Hamas has created, the most humanitarian action that Israel can take, for Israelis and Palestinians alike, is to defeat Hamas as quickly and decisively as possible.

## 5. What is being done to facilitate the supply of humanitarian aid to Gaza?

*Israel is constantly facilitating humanitarian assistance into Gaza and is working with international stakeholders to advance this objective. At the same time, genuine concern for the humanitarian situation cannot ignore Hamas's efforts to divert and steal aid, nor can it ignore the fact that the humanitarian threat faced by the Palestinians of Gaza begins from Hamas's total contempt for Palestinian welfare. Critically, demanding aid flow into Gaza, without also demanding that Hamas release the supplies it has stolen from the civilian population, is effectively rewarding the reprehensible behavior of Hamas and asking others to ensure that Hamas retains the capacity to launch armed attacks against Israel.*

The current hostilities, which were initiated by Hamas, have resulted in a significant deterioration in the humanitarian situation in Gaza. The primary cause for the current situation is Hamas's treatment of the Gazan population during the 16 years it has ruled over them. Hamas has explicitly said that it sees itself as having no responsibility for the care of the population it controls. Hamas has failed to improve the situation of the civilian population, has not invested in critical infrastructure, and did not prepare its population for the inevitable effects of the war it started with Israel. Hamas has continued to invest in its military buildup and its attacks against Israel, using its resources to further this agenda rather than supporting its population.

In the lead up to the current hostilities, Hamas continued to divert aid intended for the civilian population for terrorist purposes, including by using concrete intended for housing construction to build its massive underground tunnel network. Generous funding provided by the international community to assist the civilian population has ended up in Hamas's coffers, supporting the luxury lifestyle of its leaders and advancing its terrorist agenda.

By contrast, Israel has continued to directly provide services to Gaza, despite ongoing attacks against it. For example, prior to October 7, Israel supplied 50% of Gaza's electricity and up to 10% of Gaza's water. Israel also operated border crossings to facilitate the flow of goods and aid into Gaza. Similarly, prior to the current hostilities, almost 20,000 Gazans entered Israel daily for work.

On October 7, nine out of the 10 electricity lines coming in from Israel were hit by Hamas fire. One out of the three water pipes from Israel was likewise hit by Hamas fire. Hamas invaded the Erez crossing (the crossing through which people from Gaza pass into Israel with work permits, for medical treatment and travel purposes, and through which personnel from international organizations pass into Gaza) in the north, murdered and abducted personnel, and caused significant damage. It has put the Kerem Shalom crossing (the crossing through which goods and aid passes through into Gaza) in the south under constant fire.

The humanitarian situation in Gaza has also been affected as a result of Hamas placing rocket launching sites and other military assets within and adjacent to critical infrastructure (see, for example, a rocket launching site adjacent to a water desalination plant funded by the international community), thus willfully exposing them to harm. Hamas hoards supplies such as fuel, and has stolen from international organizations other supplies intended for the civilian population (as publicly acknowledged by the UN). Hamas has also harmed and even caused the cessation of the provision of medical services in Gaza by using hospitals for military operations, thus necessitating IDF operations in such sites and the evacuation of patients and staff for their safety. Finally, Hamas's abuse of the civilian environment and of civilians as human shields results in direct, if incidental, harm to civilians and civilian infrastructure.

As stated clearly and repeatedly by Israel's senior political and military leadership, Israel does not wish to harm civilians in Gaza and is taking steps to facilitate and expand the flow of aid to the civilian population. Under the law of armed conflict, parties to an armed conflict are required to allow and facilitate access to consignments of supplies essential for the survival of the civilian population if it is not adequately provided. This obligation is subject to important conditions, including that there are no serious reasons to fear that consignments will be diverted from their civilian destination or otherwise accrue to the advantage of the enemy's military efforts. International law does not obligate a party to a conflict to provide itself supplies to the territory of the other party.

In practice, the entry of several hundred tons of humanitarian supplies every day is now being facilitated by Israel even though Hamas possesses many essential supplies which it could itself provide to the civilian population. Israel is also providing water to Gaza from its own supplies. Israel has facilitated the establishment of field hospitals in southern Gaza, floating hospitals in the sea and is working with third parties to establish additional field hospitals. Israel has facilitated the movement of people out of Gaza to receive medical treatment, has facilitated the entry of medical supplies and equipment into Gaza, and itself provided medical supplies to patients and staff in the Shifa hospital during IDF operations to uncover and disable Hamas military infrastructure inside the hospital complex. For more information, see COGAT's website.

Genuine concern for the humanitarian situation must begin with a demand that Hamas stopping stealing aid and release the supplies it has stolen from the civilian population to sustain its terrorist objectives.

# 6. Have Israel's past restrictions on Gaza contributed to the current situation?

*Hamas's terror is not a result of Israeli restrictions. Israeli past restrictions were the direct result of Hamas's terror.*

Hamas has been perpetrating terrorist attacks against Israel since long before it took power over Gaza. Many hundreds of Israeli civilians were murdered over the years as a result of Hamas suicide bombings and other attacks, all in furtherance of Hamas's genocidal aims and its efforts to scuttle any prospect of Israeli-Palestinian peace.

In 2005, when Israel withdrew all its soldiers and civilians from Gaza, it left a coastal area with the potential to become an economic and political success story. At the time, an agreement was reached on movement and access which included an international crossing at the Gaza-Egypt border. This crossing was controlled by the Palestinian Authority, under the supervision of monitors from the European Union. In the 19 months during which this crossing point was operating, it was used by approximately 450,000 people, some 1,500 every day. In 2007, Hamas completed its violent takeover of Gaza, attacking and killing Palestinian Authority representatives and enforcing a totalitarian regime over Gaza, devoid of human rights, free speech and basic liberal democratic values. The European monitors at the crossing fled for their lives.

The access and movement agreement also included arrangements for the construction of a seaport and airport as well as arrangements for transit between Gaza and the West Bank, all of which were frustrated by Hamas's violence and rejection of any arrangements coordinated with Israel. Moreover, Hamas's consistent use of the maritime areas to conduct attacks and smuggle arms necessitated a naval blockade imposed by Israel in 2009 in accordance with international law. Over the years, Israel has eased the restrictions in the use of the maritime zone by Gazans when the security situation so allowed.

Critics of Israeli policy rarely mention the border that Gaza also has with Egypt. Moreover, Egypt itself has recognized the need to impose border restrictions to prevent the smuggling of arms into Gaza. Even President Abbas of the Palestinian Authority has in the past spoken in favor of Egyptian arrangements to prevent arms reaching Hamas in Gaza.

Cause and effect must not be confused. It was Hamas's terror that has brought misery to Gaza, and it is the uprooting of that terrorism that can offer a future without violence for Israelis and Palestinian alike.

## 7. What is Israel's response to the charge its actions against Hamas amount to collective punishment of the civilian population?

*Israel's operations are aimed against Hamas and Islamic Jihad, and are undertaken in order to neutralize the threat posed by them and secure the release of the hostages. Israel does not seek to harm the civilian population in Gaza.*

Israel's operations are intended to prevent Hamas from ever committing again massacres like that of October 7, and by no means do they seek to punish the people of Gaza. Civilians are tragically put in harm's way as a result of the fact that Hamas's military assets and militants are located within and underneath civilian infrastructure and that Hamas uses civilians as human shields as a matter of strategy.

Far from seeking to impose "collective punishment", Israel is committed to the legal principles of distinction, precaution and proportionality in directing attacks against military objectives, to facilitate the flow of humanitarian aid into Gaza and to mitigating civilian harm, even as Hamas seeks to maximize it.

Tragically, all hostilities have a collective impact on the civilian population. But accusing Israel of "collective punishment" is libel. The party guilty of the suffering of civilians in Gaza is Hamas, who in its words and actions demonstrates its willingness to sacrifice Palestinian civilians for its genocidal agenda.

## 8. Why is Israel's response to Hamas's attacks proportionate?

*Proportionality under international law is not tit for tat. Israel's actions are proportionate to the grave threat it faces, and comply with the legal requirement that the expected civilian harm resulting from an attack not be excessive in relation to the anticipated military advantage that is being sought. Israeli strikes that do not meet this threshold have been, and will continue to be, aborted.*

There are claims that the military force employed by Israel, or the harm to civilians in Gaza, is 'disproportionate' to the attacks carried out by Hamas. While the effects of the conflict on civilians are tragic, this is a misrepresentation of the meaning of the term 'proportionality' in war, both in a colloquial sense and in reference to applicable international law.

In a colloquial sense, proportionality in war is not a case of tit for tat. It means using the amount of force needed to achieve the legitimate objective of removing the threat that is being faced. The threat posed by Hamas is grave and imminent, as Hamas operates from territory that borders with Israel, seeks to conduct serious attacks inside Israel (as it did on October 7), continues to attack Israel daily (including by rocket fire that covers most of Israel's territory), holds infants, children, women and men as hostages (without any outside communication and under the threat of execution, which

has been materialized), and explicitly states its intention to keep attacking Israel until it is destroyed. As such, Israel's goal of removing Hamas's military capabilities and securing the release of the hostages is proportionate to the threat, and the force that Israel is using is the only feasible means available to neutralize the ongoing attacks and imminent threat of additional attacks.

In terms of applicable international law, the principle of 'proportionality' is found in the law of armed conflict that governs the ongoing armed conflict between Israel and Hamas and other armed groups in Gaza. Under this principle, it is prohibited to carry out an attack when the expected incidental loss of civilian life, injury to civilians, or damage to civilian objects would be excessive in relation to the concrete and direct military advantage that is anticipated from the attack. Thus, the principle of proportionality in attacks is to be applied to each and every attack independently, and it does not relate to the overall use of military force.

The military advantages that the IDF is seeking include destroying enemy military assets, targeting militants, degrading and denying enemy ability to command and control operations, neutralizing underground tunnels and infrastructure used for military purposes, and denying positions which endanger IDF ground forces (such as sniper, anti-tank and surveillance posts), all of which contribute to the overall objective of securing the release of the hostages and removing Hamas's capability to further attack Israel and its citizens. The law of armed conflict provides that a proportionality assessment is based on the military commander's judgement at the time of the attack, not on hindsight: the test is conduct-oriented, not result-oriented. As a matter of law, civilian casualties or damage to civilian objects, do not of themselves allow for a conclusion in regard to proportionality without an informed assessment of both the expected civilian harm and the military advantage anticipated at the time of the attack. Further, as discussed above, overall casualty numbers in a conflict do not indicate a violation of this principle as the proportionality test requires an individual assessment for every strike. To demonstrate, one attack causing 500 casualties should logically, and legally, be seen differently than 500 attacks against military objectives resulting overall in the same number of casualties.

Implementing the principle of proportionality in attack is an excruciating balance to strike, but one to which Israel is committed. The IDF makes many efforts to minimize, and assess estimations of, expected civilian casualties, including by urging civilians to temporarily evacuate those areas of most intense and dangerous fighting and facilitating their safe evacuation.

Sadly, many organizations make pronouncements on proportionality solely on the basis of hardship caused to civilians, without having the military expertise or necessary data to assess the other side of the equation. For more information about this principle under the law of armed conflict, see the Key Legal Aspects paper and Chapter VI of the 2014 Gaza Conflict Report.

Finally, there have been some suggestions that the law governing the initial right to resort to the use of force (*jus ad bellum*) is relevant to the current hostilities. This is incorrect since, as noted, Israel has been engaged in an ongoing armed conflict with

Hamas and other armed groups in Gaza for many years, as well as for other reasons. However, should the relevant rules of this body of law be applied to the current hostilities, it is evident that since October 7 Israel is facing an extensive and grave armed attack, which is continuing (including by incessant indiscriminate rocket fire and ground, sea and air incursions) despite Israel's attempts to stop such attacks. Israel's resort to force is necessary, given the nature of the attacks and the threat posed, and the lack of alternative means, as well as proportionate, given their scope and severity.

## 9. Is Israel committed to international law in the face of Hamas's consistent violations of that same law?

*The fact that the enemy shows no respect for international law does not absolve one from the obligation to respect it. But its unlawful behavior is likely to affect what a lawful response looks like in practice.*

On October 7, Hamas committed the worst atrocities known to man, including war crimes, crimes against humanity and acts that may amount to genocide. Since then, it has continued to commit grave crimes, including the holding of hostages, firing thousands of rockets against civilians, and endangering its own civilians by using them as human shields.

Notwithstanding these atrocities, Israel is committed to conducting its operations in accordance with international law, including the rules that govern the conduct of hostilities, known as the law of armed conflict or international humanitarian law. For more detail, see the Key Legal Aspects paper and Chapter VI of the 2014 Gaza Conflict Report.

These principles are inherently part of IDF training, guide legal advisers who participate in operational decision-making, and are the basis of examination and investigation by Israel of alleged misconduct of its forces.

In some respects, the IDF's actions go beyond the requirements of international law, serving to uphold Israel's strategic interests and broader democratic values – including the sanctity of human life and the commitment to demonstrate humanity even, and perhaps especially, in the face of Hamas's inhumanity.

## 10. What is the response to the charge that a "genocide" is taking place in Gaza?

*The accusation of genocide against Israel is not only wholly unfounded as a matter of fact and law, it is morally repugnant. The resort to such rhetoric is designed to weaponize against Israel a term coined to describe the worst crime committed against the Jewish people themselves, and in so doing is antisemitic and deeply offensive to the memory of the victims of the Holocaust. Alleging "genocide" at a time when Israel is*

*lawfully defending itself against an avowedly genocidal terrorist organization, and seeking constantly to minimize harm to the Palestinian civilian population even as Hamas seeks to maximize it, is a libel that empties the term of meaning.*

There are few allegations more repugnant than the claim that a "genocide" is taking place in Gaza. It evokes the vile antisemitic pattern of assigning to the Jewish people blame for, and accusing them of, the very crimes to which they themselves have fallen victim. It also seeks to obscure the fact that on October 7, Hamas was itself engaged in the sadistic slaughter of innocent Jews with the specific intent to destroy them as a group, in furtherance of the explicit genocidal calls in its Charter.

The use of the term "genocide" in relation to Israel's lawful targeting of Hamas, Islamic Jihad and other terrorist organizations in Gaza empties the term of meaning. Israel's policy has been made clear by its senior political and military leadership (see for example, here, here, here and here) - Israel is at war with Hamas, not with the people of Gaza. It is committed to conducting its operations in accordance with international law (see here and here) and wishes no harm to Palestinian civilians anywhere. In accordance with the law of armed conflict, and at considerable risk to its own military operations, Israel is seeking to minimize any injury that might be caused to civilians in Gaza as a result of the hostilities instigated by Hamas, even as Hamas seeks to maximize such harm, and pursues the abhorrent strategy of systematically using civilians as human shields and using protected and sensitive sites such as civilian infrastructure, schools, mosques, ambulances and hospitals for military purposes (for examples, see here).

To mention but a few examples, Israel provides advance warnings to civilians ahead of operating in specific areas; urges them to evacuate temporarily through designated safe routes; establishes humanitarian corridors and humanitarian zones; takes localized pauses in fighting for the benefit of the civilian population; and aborts operations that might be expected to result in excessive civilian harm (for more information, see here and here). Israel moreover facilitates medical treatment of wounded civilians, continuously monitors the humanitarian situation throughout Gaza out of concern for the needs of the civilian population, and works with a range of actors to facilitate the constant supply of humanitarian aid through the Egypt-Gaza border, including food, water, medical supplies, shelter and fuel, despite consistent and widespread Hamas efforts to hoard such aid and steal it from its own population (for more information, see here and here). Israel also calls on Hamas to surrender so that Israelis and Palestinians alike can prosper. All these steps of themselves plainly belie any claim of genocide.

The accusation of genocide in these circumstances is not just legally and factually incoherent, it is obscene. To direct this heinous charge against Israel, not against Hamas or in connection with any other recent conflict, including those in which hundreds of thousands of innocents have been targeted, is manifestly antisemitic. The hostilities forced upon Israel, and Hamas's reprehensible treatment of the population of Gaza, have no doubt caused significant and tragic suffering to civilians (see *What is the cause of Palestinian civilian casualties?*), but this can in no way form a valid basis, in fact or law, for the outrageous charge of genocide.

Indeed, the International Court of Justice has itself had occasion to clarify (in connection with the NATO bombings of the Federal Republic of Yugoslavia in 1999) that the threat or use of force "cannot in itself constitute an act of genocide". This applies in equal measure to the present hostilities. Falsely and malevolently describing the tragic deaths of civilians in urban warfare as a genocide, is an abuse of language that can only weaken the protections afforded by international law. It is an affront to the true victims of this horrific crime, not least the memory of the six million Jewish victims of the Nazi Holocaust. Any person of moral integrity should reject such an offensive allegation outright.